

SECOND APPEAL NO. 24 OF 2001

Shri Caetano Pereira
(deceased), major,
landlord, r/o Corlim,
Ilhas, Goa, through:-

1. Maria Elisa Pereira,
housewife, r/o Molar,
Corlim, Ilhas, Goa,
widow of Gregorio Gomes
and having 5 children
that is:-

a) Ronaldo Gomes,

b) Nobert Francis Gomes,

c) Tembla Gomes,

d) Freda Gomes,

e) Edie Gomes,

2. Francisco Jose Dario
Pereira, Govt. Employee,
married to Mrs. Josefina
Crasto & Pereira, both
r/o Malar, Corlim,
Ilhas, Goa,

3. Maria Veneziana Pereira,
Govt. Employee, married to
Mr. Loius Afonso, both
r/o Vasco da Gama,

4. Dr. Gonzaga Pereira,
Professor in the University
of Soao Joao de Deus,
Paraiba, Brazil, Divorcee,

5. Isabel Pereira, Govt.
Employee, spinster, r/o
Calvaddo, Corlim, Ilhas,
Goa,

6. Antonio Gustavo Pereira,
Govt. Employee, married to
Mrs. Neves Pereira, both
r/o Calvaddo, Corlim,
Ilhas, Goa.

... Appellants.

Versus

1. Shri Andrew Nazareth,

since deceased, represented
by 1(a) to 1(d):-

- 1(a) Mr. Casmiro Nazareth,
- 1(b) Mrs. Conceicao Nazareth,
- 1(c) Ms. Daisy Nazareth,
- 1(d) Mr. Vailankan Nazareth, all
r/o Primeiro Bairro,
Santa Cruz, Ilhas, Goa,
2. Smt. Arcangela A. Nazareth,
3. Smt. Martha Nazareth, wife of
Edmund Nazareth,
4. Joaquim Nazareth,
5. Richard Nazareth,
6. Jeraxa Fatima Nazareth,
all r/o Primeiro Bairro,
Santa Cruz, Ilhas, Goa,
7. Smt. Ida Nazareth, wife
of Lepolda Agnelo Nazareth,
8. Keen Gilberto Nazareth,
r/o Primeiro Bairro,
Santa Cruz, Ilhas, Goa,
9. Smt. Matilda Christalina
Nazareth, and
10. Shri Joseph Rodrigues,
both residing near
Hotel La Joy,
Porvorim, Bardez, Goa.

(All above addresses are the
regd. addresses of the parties) ... Respondents.

Shri S. G. Bhobe, advocate for the appellants.

Shri J. Vaz, advocate for respondent nos. 1(a) to (c) and
respondent nos. 2 and 7.

Shri V. A. Lawande, advocate for respondent nos. 3 to 6.

CORAM : F. I. REBELLO, J.

DATE : 13th June, 2003.

ORAL ORDER

One Esmeralda Fernandes had filed a suit against one Caetano Pereira. Both have since expired and are represented by their Legal Representatives. The case of the original plaintiffs was that they were owners of the property surveyed under no. 120/11. Their title to the property was based on a sale deed and ever since they were in possession of the suit property. On the other hand, the contention of the defendant was that in respect of an area of 1,075 sq. mts., which was surveyed under no. 120/11, the plaintiffs were entitled to only 993 sq. mts. and the defendant was entitled to 114 sq. mts. It was further contended that the 993 sq. mts. corresponded to the old cadastral survey no.96. It was therefore contended that the plaintiff cannot claim ownership to the entire property.

2. On behalf of the plaintiff one of the legal heirs was examined as also another witness. On behalf of the defendants also one of the heirs was examined as also another witness. On appreciation of the evidence, the trial Court came to the conclusion that the plaintiffs were able to prove that they were the owners in possession of the property surveyed under no. 120/11. The trial Court considered amongst others, the sale deed, the evidence on record, the fact of enjoyment and also part acquisition of the property by the Government. Insofar as the inventory proceedings based on which the original defendant relied for their title, the learned Court held that it did not correspond to the

boundaries of the survey no.120/11, or part thereof and, therefore, could not be relied upon.

3. In the appeal preferred, the Appellate Court has confirmed the findings of the trial Court. It is no doubt true that there are some observations which really ought not to have been made considering the test which the Appellate Court ought to address itself while examining the case of the plaintiffs. The question really is whether after considering the findings of fact recorded insofar as possession is concerned, it will be possible for this Court to interfere with the findings so recorded.

The contention raised on behalf of the appellants was that there was non-consideration by the Courts below of the inventory proceedings and also of the evidence produced. From a consideration of the judgment of the trial court I find that the trial court has addressed itself to the issue of inventory proceedings. Insofar as the evidence is concerned, the evidence of the witnesses has been marshalled and has been considered. One important aspect is that on behalf of the respondents and their witnesses it was deposed that the property was bounded on four sides by a compound wall and this wall was in existence for the last 40 years, i.e. ever since the time of the purchase. A suggestion put to the legal representatives of the original plaintiffs and their witnesses was that, there was a wall only on the western side. In other

words, the two parts of the survey no.120/11 were separated by the compound wall on the western side. Such a plea was not raised in the written statement, nor has any evidence been produced in corroboration of the suggestion put to the witnesses on behalf of the appellants. Considering the test of preponderance of evidence, the trial Court was right in coming to the conclusion that it was the respondents who were in possession. The appeal is based mainly on appreciation of evidence. There is no substantial question of law.

No interference is, therefore, called for. In the light of that, Second Appeal rejected.

F. I. REBELLO, J.

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